A.F.R

Revp- 7617

30/10/07

HIGH COURT OF CHHATTISGARH AT BILASPUR (C.G.)

Review Petition (PR) No. 2612 of 2007

V.G. Tamaskar

Versus

State of Chhattisgarh & Others

Judgment for consideration.

Sd/-
Chief Justice

Hon'ble Shri Dilip Raosaheb Deshmukh, J

I agree.

Sd/-
Dilip Raosaheb Deshmukh
Judge

Post for 30th /October, 2007

Sd/-
Chief Justice

30/10/2007

(36)

Revp-76/07

HIGH COURT OF CHHATTISGARH AT BILASPUR

DIVISION BENCH

CORAM: HON'BLE SHRI JAGDISH BHALLA, Ag.CJ. & HON'BLE SHRI DILIP RAOSAHEB DESHMUKH, J.

Review Petition (P.R) No.2612 of 2007

PETITIONER : V.G. Tamaskar, S/o Late Shri G.Y. Tamaskar, Aged about 62 years, Advocate.

VERSUS

RESPONDENTS

1. State of Chhattisgarh, Through Secretary, Department of Urban Development, D.K.S. Bhawan, Mantralaya, Raipur (C.G.)
2. The President Municipal Council, Bhilai-Charoda, District Durg (C.G.).
3. The Chief Executive Officer, Municipal Council, Bhilai – Charoda, Distt. Durg (C.G.).
4. Niharika Vyavsayik Parisar, Kaiyan Samiti, Bhilai-3, Through The President Shri Ganesh Ram Chandrakar, S/o Shri Chandulai Chandrakar, aged about 35 years, Occupation: Business, R/o Village and P.O. Quori, Tahsil Patan, Distt. Durg (C.G.).

Review Petition

Present : Shri V.G. Tamaskar, petitioner in person.
Shri V.V.S. Murthy, Deputy Advocate General, for the State/ respondent No.1.
Shri Asutosh Singh Kachhawaha, counsel for respondent Nos. 2 and 3.

JUDGMENT

(Delivered on 30th October, 2007)

The following Judgment of the Court was delivered by **Hon'ble Jagdish Bhalla, Actg.C. J.**

Aggrieved by the result and effect of the order dated 20-04-2007, passed in Writ Appeal No. 48/2007, the petitioner who is a registered member

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of State Bar Council of Chhattisgarh having its registration number as CG330/1982/Advocate has filed this review petition.

To regulate filing of the petitions by the Societies / Unions and payment of Court fee, the Registrar General of this High Court on 03-04-2007 issued the following circular :

"Circular

No.8466 dated 03/04/2007.

As provided under Rule 126 of the High Court of Chhattisgarh Rules, 2005 with regard to procedure for filing specially having regard to computerization requirement following circular may be issued.

Petitions filed by several persons having similar but separate and distinct interest in the subject matter of controversy involving common questions of law and facts may file a common petition but each petitioner shall pay a separate court fee.

If the petition is filed by/on behalf of a Society/Union then the following particulars have to be mentioned :-

That the society/union has been registered under the Societies Registration Act and, if registered, that the petition has been accompanied by certificate of registration, certified as true copy.

That the society/union passed any resolution empowering the person through whom the petition has been filed and that the petition is accompanied by true copy of resolution, and

The number of members of the society/union.

If the petition has been filed through a power of attorney holder, that it has been accompanied by a copy of such power of attorney, certified as true copy.

Each member of the Society/Union shall pay a separate Court Fee.

For all other purposes, it shall be treated as a single petition and the office shall assign one number. Such common writ petition shall be in the format as prescribed in the principal Rule and shall be supported by an affidavit of any one of the petitioners. For such common petition one Vakalatnama with one set of Court Fee stamp shall be sufficient. "

After the above circular was issued, on 20-04-2007 the writ appeal came up for hearing on the Board wherein it was ordered that no society has any fundamental right, therefore, the writ appeal filed on behalf of the society is not maintainable. However, learned counsel for the appellant conceded and prayed for permission to implead the members of the society and in the process had also agreed to pay Court fee on behalf of each and every member of the Society. Therefore, the Court had issued a direction to implead all the members of the society as parties to the proceedings and had further directed to pay necessary Court fee by every member.

The main grievance of the applicant in this review petition is that in light of the order dated 20.04.2007 now even if one petition is filed with a common cause and common interest of all the members of the society/union by the said organisation, every individual member would be liable to be impleaded as party and to pay separate Court fee.

We have given anxious consideration and critically examined the matter and we are of the considered opinion that the members of the society/union have jural relationship and once there is a jural relationship between the parties who have approached this Court with common interest and cause, then it cannot be said to be a matter of evading Court fee by filing one petition by the members of the society. Whenever in a given case the Members of the society/union have a jural-relationship having common, equal and equitable rights with common interest & cause, they need not pay separate Court fee. Therefore, it would not be fair to call upon such members to pay separate court fee. The Hon'ble Apex Court had examined a matter regarding payment of separate Court fee by every petitioner in the case of ***Mota Singh & others Vs. State of Haryana & others – (AIR 1981 SC- 484)*** wherein it has been observed that number of transporters joined hands together and had filed a petition opposing certain taxes and it was held that every owner of a truck plying his truck for transport of goods has a liability to pay tax impugned in the petition, each one has his own independent cause of action. A firm as

understood under the Partnership Act or a Company as understood under the Indian Companies Act, if it is entitled in law to commence action either in the firm name or in the Company's name, can do so by filing a petition for the benefit of the Company or the partnership and in such a case court fee would be payable depending upon the legal status of the petitioner. But it is too much to expect that different truck owners having no relation with each other either as partners or any other legally subsisting jural relationship of association of persons would be liable to pay only one set of court fee simply because they have joined as petitioners in one petition. Each one has his own cause of action arising out of the liability to pay tax individually and the petition of each one would be a separate and independent petition and each such person would be liable to pay legally payable court fee on his petition. It would be a travesty of law if one were to hold that as each one who uses high way, has common cause of action with the rest of truck pliers.

In light of the above, the review petition is disposed of with the clarification that whenever in a given case, the members of the society/union have jural-relationship having common, equal and equitable rights, for protection of such rights they have a common interest & cause, if they approach this Court, all of them need not be impleaded except the authorised person and they need not pay separate Court fee as well.

Sd/-
Chief Justice

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Sd/-
Dilip Raosaheb Deshmukh
Judge